

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

James B. Weersing,)
)
Petitioner,) C.A. No. 8:09-cv-00088-JMC
)
v.) **ORDER**
)
Leroy Cartledge, Warden, McCormick)
Correctional Institution,)
)
Respondent.)
)

Petitioner, a state prisoner, seeks habeas relief pursuant to 28 U.S.C. § 2254. This matter is now before the court upon the Magistrate Judge's Report and Recommendation [Entry # 59], filed on September 21, 2010, recommending that Petitioner's Motion for Temporary Restraining Order [Entry # 54] be denied on the grounds that Petitioner has an adequate remedy at law for the allegations that he has raised in his motion, and alternatively, if the court were to allow Petitioner to proceed on the allegations contained in his motion, he would likely not succeed on the merits of these claims. The Report and Recommendation sets forth in detail the relevant facts and legal standards in this matter, and the court incorporates the Magistrate Judge's recommendation without a recitation.

STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) for the District of South Carolina, which authorize the Magistrate Judge to review post-trial petitions for relief and submit findings and

recommendations to the District Court. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions.

The Magistrate Judge apprised Petitioner of his right to file objections to the Report and Recommendation [Entry # 59-1]. Petitioner filed no objections to the Report and Recommendation within the prescribed time period.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. It is

therefore **ORDERED** that Petitioner's Motion for Temporary Restraining Order [Entry # 54] is **DENIED**. Petitioner shall have thirty days from the date of this Order to respond to Respondent's Motion for Summary Judgment [Entry # 30].

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

October 13, 2010
Greenville, South Carolina